

George C. Swinger, JR.,
Plaintiff,
vs.

7 Michael B. Cole, Joe Dunegan,
8 William Sofianos, Nick Jendreau,
9 They are sued in their individual
10 and official capacities.
11 Clark County, Washington, is a
12 Municipality of the State of Washington,
13 Defendants.

14 1. This is a civil action seeking damages against Defendants for
15 committing acts, under color of law, which deprived Plaintiff of his rights secured
16 under the Fourth, First, Eighth and Fourteenth amendments to the United States
17 Constitution and laws of the United States, with intent to deny Plaintiff equal
18 protection of laws, and for refusing or neglecting or intentionally to prevent such
19 deprivations to Plaintiff. The court has jurisdiction of this action under
20 42 U.S.C. §1983 and 28 U.S.C. §1333.

21 2. The court also has jurisdiction under 28 U.S.C. §1331 and its
22 general or original jurisdiction.

23 Plaintiff George C. Swinzer, JR. is a citizen and resident of the
24 city of Vancouver, State of Washington and the United States of
25 America.

26 | 4. Defendant Clark County is a municipal corporation, organized under
27 | the laws of the State of Washington.

28 5. Defendant Joe Dunegan is the jail administrator for the county of
29 Clark, city of Vancouver, state of Washington at all times relevant to this
30 complaint.

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1 6. Defendants Michael B. Cole, Nick Jendreau and William Sofianos
2 were or are custody officers employed by the law enforcement office or
3 jail, of the city of Vancouver, county of Clark, state of Washington.

4 7. Plaintiff sues each and all Defendants (Except the county) in
5 both their individual and official capacities.

6 8. At all times material to this complaint, Defendants Michael B.
7 Cole, Joe Dunegan, Nick Jendreau, William Sofianos ~~et al.~~^{G5} acted under
8 color of the Statutes, customs, ordinances, and usage of the State of
9 Washington, the city of Vancouver, county of Clark, and the Law Enforcement
10 Office or Jail, or individually while in uniform and on duty.

11 **COUNT I**

12 1. On or about August 27, 2002 at approximately 11:00, plaintiff
13 was working as a jailhouse laundry trustee at the Clark County, Vancouver
14 Jail located at W. 13th Street, City of Vancouver.

15 2. Defendants William Sofianos, Nick Jendreau and Michael B. Cole
16 were walking by the control booth located approximately ten to twenty
17 feet from the Sally Port.

18 3. Plaintiff at the same time was on his way to check to see
19 if the lunch carts had arrived in or at the Sally Port.

20 4. Plaintiff and defendants William Sofianos, Nick Jendreau and
21 Michael B. Cole were headed or going to the Sally Port. But not together.

22 5. Plaintiff walked a short distance behind Defendant Michael B.
23 Cole.

24 6. Plaintiff asked Defendant Michael B. Cole what's up.

25 7. Defendant Michael B. Cole either did not hear plaintiff or
26 intentionally ignored plaintiff.

27 8. Plaintiff is usually soft spoken.

28 9. Upon Plaintiff and Michael B. Cole's reaching the Sally Port,
29 whereas, we were last to get to the Sally Port, Plaintiff said jokingly
30 "So are we all gonna get some donuts today?", or something similar.

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10. Plaintiff had at one time prior to this incident or complaint a fairly good relationship with officers at the jail in general.

3 II. Defendant Michael B. Cole responded immediately to
4 Plaintiff's statement.

5 12. Defendant Michael B. Cole turned semi quickly stating
6 "What'd you say you little punk": (or what'd you say you little fucking punk).

7 13. Defendant Michael B. Cole while turning and stating this
8 had a huge black duffle bag balanced on his shoulder in which he slammed
9 to the ground.

10 14. Defendant Michael B. Cole immediately after slamming the huge
11 Black Duffle bag to the ground intentionally charged directly at plaintiff
12 grabbing plaintiff by the throat, shoving Plaintiff backwards almost
13 off balance, shoving plaintiff into the wall, pinning plaintiff to the
14 wall, choking plaintiff and started to punch plaintiff, but some reason
15 chose not to punch plaintiff.

16 15. Defendant Michael B. Cole threatened plaintiff, however
17 plaintiff is having a hard time with remembering the words of the
18 threat and therefore may agree to omit to this threat or not
19 include it.

20 16. Defendant Michael B. Cole while choking and pinning
21 plaintiff by his throat against the wall told plaintiff "don't you
22 ever say that again!" (or don't you ever say that to me again). "Do you
23 understand?"

24 17. Plaintiff could not breath and responded with a croak that
25 was obviously not good enough or audible enough to satisfy Defendant
26 Michael B. Cole's wants or desires.

27 18. Defendant Michael B. Cole repeated himself "do you
28 understand?"

19. Defendant Michael B. Cole loosened the grip slightly that
he had around plaintiff's exauphagus or windpipe.

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1 20. Plaintiff still once again could only respond with a croak
2 although slight more audible. This response obviously satisfied
3 defendant Cole's wants and desire, wherefore, he released
4 plaintiff and told plaintiff to "go back where you came from."

5 21. Defendants William Sofianos and Nick Jendreau both
6 stood within approximately five to ten foot radius of plaintiff and
7 defendant Michael B. Cole.

8 22. Defendants William Sofianos and Nick Jendreau ~~intentionally~~^{65.}
9 intentional ignored the fact that plaintiff was intentionally
10 being assaulted by defendant Michael B. Cole.

11 23. Defendants William Sofianos and Nick Jendreau intentionally
12 stood with feet molded to the ground and watched plaintiff be
13 intentionally assaulted by defendant Michael B. Cole.

14 24. Defendant William Sofianos and Nick Jendreau intentionally
15 failed to protect plaintiff from defendant Michael B. Cole.

16 25. Defendants William Sofianos and Nick Jendreau had a
17 duty, and that duty was to protect plaintiff from an intentional
18 assault committed by defendant Michael B. Cole, while in their
19 presence.

20 26. Plaintiff was unarmed, and at no time did he provoke
21 defendant Michael B. Cole, or assault or resist defendant Michael B.
22 Cole.

23 27. Plaintiff at the time of the assault was a convicted
24 inmate in closed custody at a city or county or both jail.

25 28. As a result of the assault by defendant Michael B. Cole,
26 plaintiff suffered unknown physical injuries, wherefore plaintiff has at all
27 times hereto been denied certain medical care.

28 29. However, plaintiff had minor guages in the skin ~~OF~~^{65.} OF his
29 throat due to defendant Michael B. Cole's nails digging into the skin,
30 soreness or pain in his throat for several months, soreness or pain in his knee

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1 and a knott on the head, most severely mental, psychological
2 and emotional anguish, anxiety or trauma.

3 30. Furthermore, due to Defendants Nick Jendreau and
4 William Sofianos Failure to protect plaintiff, Plaintiff was injured as a
5 result and suffered said injuries,

6 31. As a result of their intentional unlawful and malicious acts
7 towards plaintiff, Defendant William Sofianos and Nick Jendreau
8 intentionally, or with deliberate indifference and callous disregard of
9 Plaintiff's rights, deprived plaintiff of his right to equal protection of
10 the laws and rights secured by the constitution and laws of the United
11 States and state of Washington, in violation of the 4th, 8th and 14th
12 amendments of the constitution of the United States and 42
13 U.S.C. §1983,

14 32. As a result of his intentional unlawful, Malicious and
15 arbitrary and capricious physical abuse of Plaintiff, defendant Michael
16 B. Cole intentionally and deliberately and callous and deliberate indifference
17 disregarded Plaintiff's Rights, deprived Plaintiff of his right to equal
18 protection of the law and in violation of the First, Fourth, Eighth and
19 Fourteenth amendments of the constitution of the United States of
20 America and 42 U.S.C. §1983, and State laws.

21 Wherefore, Plaintiff demands Judgment against Defendants
22 Nick Jendreau and William Sofianos, Jointly and Severally for compensatory
23 damages in the amount of \$2,000 and further demands against each of
24 said defendants (except the county, and defendants Michael B. Cole and
25 Joe Dunegan), Jointly and Severally, for Punitive damages in the amount
26 of \$3,000 plus the cost of this action and such other relief as the
27 Court deems just and equitable.

28 Wherefore, Plaintiff demands Judgment against Defendant Michael
29 B. Cole, severally, for compensatory damages in the amount of \$2,000 and
30 further demands Judgment against Defendant Michael B. Cole, severally,

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1 For punitive damages in the amount of \$55,000, plus costs of this
2 action and such other relief as this court deems just and equitable.
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4 Count II
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6 1-32. Plaintiff realleges paragraph 1-32 of count one as paragraphs
7 1-32 of count II and hereby incorporates them in this count as
8 though fully set forth herein.

9 33. At all times relevant to this complaint Defendants Michael B.
10 cole, Nick Jendreau, and William Sofianos, as custody officers of the
11 Clark County, Vancouver, Washington Law Enforcement Office or Jail,
12 were acting under the direction and control of Defendant Joe
13 Dunegan and Defendant Clark County.

14 34. Acting under color of law and pursuant to official policy or
15 custom or practice, Defendants Joe Dunegan and Clark County
16 knowingly, recklessly, or with deliberate indifference and callous
17 disregard of Plaintiff's rights, failed to instruct, supervise, control
18 and discipline on a continuing basis Defendant custody officers,
19 or custody officers in general in their duties to refrain
20 from: (1) unlawfully and maliciously harassing a citizen (inmate) who
21 was acting in accordance with his constitutional and statutory rights,
22 privileges and immunities, (2) unlawfully and maliciously assaulting a
23 citizen (inmate) or otherwise using unreasonable and excessive force, and
24 (3) otherwise depriving Plaintiff of his constitutional and statutory
25 rights, privileges and immunities. As would be applied to the
individual defendants acts.

26 35. Defendant Joe Dunegan and Clark County had knowledge
27 or, had they diligently exercised their duties to instruct,
28 supervise, control, and discipline on a continuing
29 basis, should have had knowledge that the wrongs created
30 by and done by Defendants Michael B. Cole, Nick Jendreau and William Sofianos
or their failure to act, herefore alleged were about to be committed.

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1 Defendants Joe Dunegan and Clark County had power to prevent
2 the commission of said wrongs, could have done so by reasonable
3 diligence, and knowingly, recklessly, or with deliberate indifference
4 and callous disregard of Plaintiff's rights failed or refused to do so.

5 Defendants Joe Dunegan and Clark County had knowledge by
6 means of another custody officer's report, while Defendant Michael
7 B. Cole was in the academy, was unfit for the job for being hired.
8 (or while Defendant Cole was in training).

9 Defendants Joe Dunegan and Clark County hired and
10 allowed Defendant Michael B. Cole to work in or at said jail, thereby,
11 knowingly, recklessly, deliberately and callously allowed an unstable,
12 unfit citizen to become an officer, knowing the potential risk that
13 Defendant Michael B. Cole posed, and likelihood he might commit such
14 wrongful acts, as he has committed, subsequently resulting in
15 Plaintiff's assault, injuries and deprivation of his rights.

16 Defendants Joe Dunegan and Clark County, directly or
17 indirectly, under color of law, approved or ratified the unlawful, deliberate,
18 malicious, reckless and wanton conduct of Defendant Michael B. Cole
19 heretofore described.

20 Defendants Joe Dunegan and Clark County, directly or
21 indirectly, under color of law, approved or ratified the unlawful,
22 deliberate, wanton conduct of defendants Nick Hendren and William
23 Sofianos. Heretofore described.

24 AS A direct and proximate cause of the acts of Defendants
25 Joe Dunegan and Clark County as set forth in paragraph 33-39,
26 Plaintiff suffered physical injury, medical expenses, and severe mental
27 anguish and anxiety in connection with the deprivations of his constitutional
28 and statutory rights guaranteed by the First, Fourth, Eighth and Fourteenth
29 amendments to the Constitution of the United States, and protected by 42
30 U.S.C. §1983.

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1 Wherefore, Plaintiff demands Judgment against Defendants
2 Joe Dunegan and Clark County, Jointly and Severally, for
3 compensatory damages in the amount of \$2,000, and further
4 demands Judgment against Defendant Joe Dunegan, severally, for
5 punitive damages in the amount of \$3,000, plus the costs
6 of this action and any such other relief as this court deems
7 just and equitable.

8 Wherefore, plaintiff prays in the alternative, Judgment against
9 Defendants Michael B. Cole, Joe Dunegan, Nick Tendreau, William
10 ^{65c} Sofianos and Clark County, Jointly and severally, for compensatory
11 damages in the amount of \$8,000, and further demands Judgment
12 against each said defendant (except the county), Jointly and
13 severally, for punitive damages in the amount of \$65,000, plus the
14 costs of this action and such other relief as this court
15 deems just and equitable.

16 And a Jury if practicable or deemed necessary or appropriate.
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19 Signed this 17th day of January 2005.

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George C. Swinyer Jr.
George C. Swinyer Jr.

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AFFidavit

State of Washington)

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(County of walla walla)

I George C. Swinney, Jr., declare and depose and state the following:

I. I am the plaintiff in the above referenced case.

2. And that I make this declaration on my own behalf,

and state as follows:

This complaint is written in the form due to plaintiff
not having the complaint forms needed to do so.

This should be considered a supplemental or substitute until plaintiff can obtain necessary forms, unless the courts deem otherwise.

Plaintiff is currently being deprived his legal property.

Plaintiff is also currently being deprived legal copying services and other legal services.

This complaint is written to better explain the facts and include jurisdiction of this court and the appropriate capacities and relief sought. As to plaintiff knowledge and belief.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Subscribed and sworn to before me this 21st day of

January 2005.

Signed this 30th day of January 2005.

George C. Swinney JR



Wanda K. Heyman

Notary public in and for
the state of Washington,

My commission expires: 8/20/07

George C. Smither Jr., 844525

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